



**Charter Schools
Development Corporation**

August 15, 2011

Ms. Jodie Harris
Policy Specialist
CDFI Fund
Via email cdfihelp@cdfi.treas.gov

RE: CDFI Bond Guarantee Program

Dear Ms. Harris:

Charter Schools Development Corporation ("CSDC") is pleased to submit the following comments and suggestions to the CDFI Fund as relates to The CDFI Bond Guarantee Program (CBGP) as created in the Small Business Jobs Act of 2010, and signed into law on September 27, 2010. Such a program, which could dramatically increase CDFI access to long term, patient capital, for projects and businesses serving Low Income Targeted Populations ("LITP") of CDFI's, is important to the Country's economic recovery.

CSDC is a unique CDFI serving low income charter schools nationally. As a 501(c)(3) corporation, established in 1997 to assist public charter schools with the provision of affordable financing for facilities and capital improvements, CSDC is the only national non-profit focused solely on financing early-stage, though mature, charter schools organizations. CSDC's Primary Mission is to promote community development nationally by targeting and providing financing to public charter schools enrolling and serving a significant Low-Income Targeted Population (LITP) defined as any of the following: 1) students in grades Pre-K-12 eligible for federally subsidized free or reduced price lunches under the national School Lunch Program; 2) public charter schools located in economically distressed census tracts; and 3) public charter schools located in communities with a large number of poor performing district schools. CSDC provides client schools with loan and lease payment guarantees, credit enhancements, loans for tenant improvement/leasehold security, FF&E, cash flow notes, construction and facility acquisition, and developmental services. We feel it is important for the CDFI Fund to allow these broader definitions of "low income" as used in Section 114A(a)(2).

CSDC helped pioneer the charter school financial sector and paved the movement of capital and credit to charter schools by private sector financial institutions. Combined with our CDFI direct lending activities we have made available below market priced capital to our targeted LITP. However, the demand for CSDC's services well outpaces our financial resources. It is estimated that there are currently over 490,000 children on charter school waitlists nationwide and with an average enrollment of 400 students, over 1,000 new schools are needed to close the gap. The creation of new student positions impact far beyond the child and their family. With every 20 new student positions created, approximately 1.5 permanent, full time equivalent jobs are created in that community.

Promoting excellence and competition in public education by providing credit enhancement, financing and development services for charter school facilities

As a reaction to the overwhelming bi-partisan support that Charter Schools enjoy, the high number of new jobs created and the well documented “spark” of economic development when a new school is located in these underserved communities; we strongly urge the CDFI Fund to consider dedicating, at a minimum, one \$100 million bond issue, to Charter School Facilities within the Community Facilities designation.

Our comments and suggestions, in reference to CSDC’s mission and LITP, are attached.

We appreciate this opportunity to help shape the CGBP. Please feel free to contact us at 303-297-1128.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura Fiemann', with a long horizontal flourish extending to the right.

Laura Fiemann
Vice President, CDFI Operations
Charter Schools Development Corporation

Public Comment on Implementation Issues Regarding the CDFI Bond Guarantee Program (CBGP):

The CDFI Fund invites and encourages comments and suggestions germane to the mission, purpose, and implementation of the CDFI Bond Guarantee Program. The CDFI Fund is particularly interested in comments in the following areas:

1. Definitions (a) Section 114A(a) of the Act provides certain definitions applicable to the CDFI Bond Guarantee Program. In particular, Section 114A(a)(2) of the Act defines eligible community or economic development purpose as any purpose described in section 108(b) [12 U.S.C. 4707(b)] and includes the provision of community or economic development in low-income or underserved rural areas. The CDFI Fund is interested in comments regarding all definitions found in the Act as they relate to the program, including the following:

(i) How should the term “low income” be defined as such term is used in Section 114A(a)(2)?

Within CSDC’s specified LITP, the CDFI Fund should use a definition of low-income geographies based on several indicators including students in grades Pre-K-12 eligible for federally subsidized free or reduced price lunches under the national School Lunch Program; 2) public charter schools located in economically distressed census tracts; and 3) public charter schools located in communities with a large number of poor performing district schools.

(ii) How should the term “rural areas” be defined as such term is used in Section 114A(a)(2)? For example, is a rural community any census tract that is not located in a metropolitan statistical area (MSA)? Respondents should discuss how a particular definition would enable the program to target businesses and residents in rural areas, and discuss whether there are particular measures that should not be used because they may inadvertently disadvantage certain populations (i.e., provide examples of particular households or communities that would not qualify under specific definitions).

The CDFI Fund should use the US Department of Agriculture’s definition of rural areas.

(iii) How should the term “underserved” be defined and/or measured?

Within CSDC’s LITP, underserved should include communities and schools where the local peer schools are underperforming.

(iv) Should “eligible community or economic development purpose” be defined to allow a CDFI or its designated Qualified Issuer to only invest inside the CDFI Fund Target Market that it was certified to serve?

Yes. By holding all CDFI’s accountable to their Target Markets, funds will be more evenly distributed and more communities can be served.

2. Use of Funds

(a) The Act defines a loan as any credit instrument that is extended under the CDFI Bond Guarantee Program for any eligible community or economic development purpose. Section 114A(b) of the Act states that the Secretary of the Treasury (the Secretary) shall guarantee payments on bonds or notes issued by a qualified issuer if the proceeds of the bonds or notes are used in accordance with this

section to make loans to eligible community development financial institutions (CDFIs) (1) For eligible community or economic development purposes; or (2) To refinance loans or notes issued for such purposes. The CDFI Fund invites and encourages comments and suggestions germane to the criteria and use of funds.

The CDFI Fund is particularly interested in comments including the following:

(i) Should there be any limitations on the types of loans that can be financed or refinanced with the bond proceeds? Are there any uses of bond or note proceeds that should be excluded or deemed ineligible regardless of the fact that the use was in a low-income or underserved rural area?

No. Each CDFI, adhering to its mission will assure the funds are distributed to areas with the greatest need. There should be no prohibition against using the CBGP in conjunction with other government programs such as the New Markets Tax Credit, the Low Income Housing Tax Credit, HOME funds or guarantee programs offered through the Small Business Administration or the US Department of Agriculture.

(ii) Should the capitalization of: (1) Revolving loan funds; (2) credit enhancement of investments made by CDFIs and/or others; or (3) loan loss reserves, debt service reserves, and/or sinking funds in support of a Federally guaranteed bond, be included as eligible purposes?

Yes. The capitalization of all the listed uses should be included as eligible purposes.

(iii) Should there be any limits on the percentage of loans or notes refinanced with the bond proceeds? If so, what should they be?

Yes. No more than 25% of the aggregate bonds (after allocation for Cost of Issuance and Reserves) should be used for refinancing activities. This program is intended to stimulate economic growth and therefore, the focus should be on new project finance.

(iv) Should CDFIs be allowed to use bond proceeds to purchase loans from other CDFIs? If so, should the CDFI that sells the loans be required to invest a certain portion of the proceeds from the sale to support additional community development activities?

(v) Should the CDFI Fund place additional restrictions on the awardees' loan products, such as a cap on the interest rate, fees and/or late payment penalties or on the marketing and disclosure standards for the products? If so, what are the appropriate restrictions?

No

(b) Section 114A(c)(1) states that a capital distribution plan meets the requirements of the subsection if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than the cost of issuance fee) are used to make loans for any eligible community or economic development purpose, measured annually, beginning at the end of the one-year period beginning on the issuance date of such guaranteed bonds or notes. The CDFI Fund welcomes comments regarding this provision, specifically regarding what penalties the CDFI Fund should impose if an issuer is out of compliance.

(c) Section 114A(c)(2) states that not more than 10 percent of the principal amount of guaranteed bonds or notes —, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount—may be held in a relending account and may be available for new eligible community or economic development purposes.

(i) How should the CDFI Fund define “relending” account as stated in Section 114A(c)(2)? How should it differ from the loans made under Section 114(c)(1)?

As funds recycle from early payoff/refinancing the relending account should allow for the CDFI to use those funds for eligible project purposes. There should not be set limitations on the CDFI's use of funds as long as it is in compliance with its mission. Additionally, a CDFI should be able to determine the maturity and amortization of an underlying loan to end borrower as not all projects require (for example) 30 year debt.

(ii) If the capitalization of revolving loan funds is deemed an allowable use of funds under Section 114A(a)(4), what activities would be eligible under the relending account?

(iii) If additional reserves are held, should they be permitted to be funded from the relending account?

If additional reserves are mandated, they should be excluded from the definition of the relending account and counted as deployed for purposes of the 90% deployment requirement.

(iv) Should a sinking fund, or any other reserve to allow for the payment of debt service, be permitted to be funded from the relending account?

If a sinking fund or other reserve is required, it should be excluded from the definition of the relending account and counted as deployed for purposes of the 90% deployment requirement.

(i) In the event that the CDFI Fund determines that there is a risk of loss to the government for which Congress has not provided an appropriation, what steps should the CDFI Fund take to compensate for this risk?

a. Should the interest rate on the bonds be increased? *No*

b. Should a larger risk-share pool be required? *No*

c. Should the CDFI Fund require restrictions, covenants and conditions (e.g., net asset ratio requirement, first loss requirements, first lien position; over-collateralization, replacement of troubled loans)?

No

In all cases above, the CDFI through its routine underwriting, servicing and work out activities will be the best source of mitigating the risk to the government.

(ii) How should the CDFI Fund assess and compensate for different levels of risk among diverse proposals without unduly restricting the flexible use of funds for a range of community development purposes?

For example:

a. Should the CDFI Fund take into account the participation of a risk sharing partner? What should be the parameters of any such risk-sharing?

b. Should the Fund take into account an independent, third-party credit rating from a major rating

agency?

No, the credit agencies are not familiar enough with the CDFI's to adequately analyze the credits.

(iii) Are there restrictions, covenants, conditions or other measures the CDFI Fund should not impose? Please provide specific examples, if possible.

(iv) Should the qualified issuer be allowed to set aside the three percent from the bond proceeds or should these funds be separate from the proceeds?

The Fund should allow for the risk-share pool to be funded from various mechanisms including but not limited to: bond proceeds, third-party CDFI investors, or investment cash flows (e.g. the spread between assets earned and cash required to service the bond).

3. Guarantee Provisions

(a) Section 114A(a)(3) defines a guarantee as a written agreement between the Secretary and a qualified issuer (or trustee) pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible CDFI. The CDFI Fund invites and encourages comments and suggestions relating to the guarantee provisions, especially:

(i) Should the CDFI Fund define and determine "verifiable losses of principal, interest, and call premium?

Definitions should be in line with routine bond transactions. Losses should be actual monetary losses.

(ii) Should the CDFI Fund permit a call upon the guarantee at any point prior to the issuer liquidating the Page 9 of 22 available assets? If so, under what condition should a call on the guarantee be permitted?

(b) Section 114A(e)(1) indicates that the Treasury guarantee shall be for the full amount of a bond or note, including the amount of principal, interest, and call premiums not to exceed 30 years. The Treasury may not guarantee any amount less than \$100 million per issuance.

(i) Should the CDFI Fund set specific guidelines or prohibitions for the structure of the bond (e.g., callable, convertible, zero-coupon)?

No, each CDFI working with its LITP should be able to structure transactions without restriction.

(ii) Should bonds that are used to fund certain asset classes be required to have specific terms or conditions? Should riskier asset classes or borrowers require additional enhancements?

No, each asset class should not be individually analyzed. The program guaranty and requirements are sufficient for all asset classes.

(c) Section 114A(e)(2) states limitations on the guarantees. (1) The Secretary shall issue not more than 10 guarantees in any calendar year under the program. (2) The Secretary may not guarantee any amount under the program equal to less than \$100 million but the total of all such guarantees in any fiscal year may not exceed \$1 billion.

(i) Can qualified issuers apply for multiple issuances? Should there be a limit per qualified issuer? If so, what should that limit be?

Yes, there should be a limit to one annual issuance per CDFI to ensure the funds are distributed nationally and equitably.

4. Eligible Entities

(a) Section 114A(a)(1) defines an eligible entity as a CDFI (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or that has been granted by a qualified issuer, a loan under the program. The CDFI Fund welcomes comments on issues relating to eligible entities, particularly with respect to the following questions:

(i) Should the CDFI Fund require one qualified issuer (or appointed trustee) for all bonds and notes issued under the program?

The Fund should not require one qualified issuer (or appointed trustee) for all bonds and notes issued under the program because doing so would prevent multiple CDFIs from becoming direct issuers.

(ii) Should the CDFI Fund permit an entity not yet certified as a CDFI to apply for CDFI certification simultaneous with submission of a capital distribution plan?

No

(iii) Should the CDFI Fund allow all existing CDFIs to apply, or should there be minimum eligibility criteria?

Any CDFI in good standing as of the date of the application deadline should be deemed a qualified applicant.

(iv) The Act states that a qualified issuer should have “appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes.” How should the CDFI Fund determine that a qualified issuer meets these requirements?

A CDFI should be required to submit and provide proof of its process, expertise, capacity, and experience.

(v) What penalties should be imposed in the event that a CDFI participating in the program ceases to be a certified CDFI? What remedies and cure periods should the CDFI Fund allow in the event of a lapse in CDFI certification?

(i) Should the CDFI Fund require one servicer for all bonds and notes issued under the program?

No, the Fund should allow multiple servicers.

(ii) Should the CDFI Fund require the master servicer and servicers to have a track record of providing similar services? How should the CDFI Fund evaluate the capabilities of prospective servicers and master servicers?

Yes, the CDFI Fund should require similar proof of process, expertise, capacity, and experience for the Master Servicer.

(iii) Should the CDFI Fund pre-qualify servicers and make those groups known to CDFIs wishing to submit a capital distribution plan for consideration?

Yes

(iv) Should a CDFI issuer be allowed to serve as its own servicer?

Yes, CDFI's should be able to service their own portfolios.

(v) Should the master servicer be eligible to serve as a program administrator or servicer for a qualified issuer? If so, how should potential conflicts of interest be managed?

No, this creates too much conflict.

(i) How should a CDFI demonstrate its expertise?

As each CDFI is unique in its mission and purpose, the CDFI Fund should review the history, track record and strength of staff and board for each applicant.

(ii) Are there any institutions that should be prohibited from serving as qualified issuers?

The CDFI Fund should limit qualified issuers to non-profit CDFI's.

(iii) Should the CDFI Fund establish minimum criteria for serving as a qualified issuer?

There should be minimum criteria surrounding the CDFI's expertise and history in serving the LITPs of the individual CDFI.

(iv) Should the CDFI Fund set a minimum asset size for CDFI participation as a qualified issuer?

No, the Fund should not apply minimum asset standards to CDFI participation as a qualified issuer nor as a participant in a pooled asset guaranteed bond.

(v) Should the CDFI Fund require the issuer to have a minimum net capital (real equity capital) and require a set amount of net capital be held for the term of the bond? If so, what is a reasonable level to require?

The Fund should not require minimum net capital standards for CDFI participation as a qualified issuer nor as a participant in a pooled asset guaranteed bond.

(vi) Should qualified issuers be required to obtain an independent, third-party credit rating from a major rating agency?

Qualified issuers should not be required to obtain a credit rating from a major third-party rating agency for reasons described above.

5. Capital Distribution Plan

(a) Section 114A(a)(8)(B)(ii)(II) states that a qualified issuer shall provide to the Secretary: (aa) an acceptable statement of the proposed sources and uses of the funds and (bb) a capital distribution plan that meets the requirements of subsection (c)(1). The CDFI Fund seeks comments relating to the capital distribution plan requirement, specifically:

(i) What elements should be required in an acceptable statement of proposed sources and uses of the funds? How should the CDFI Fund measure acceptability?

Within the application, a CDFI should be requested to provide its plan of distributing the funds citing numerous projects and timeframes. As long as the plan, along with the sources and uses, is aligned with the CDFI's mission, there should be no further measures.

(ii) What elements should be required in a capital distribution plan? Are there examples of such plans, Federal or otherwise, upon which the CDFI Fund should model the CDFI Bond Guarantee Program's capital distribution plan requirements and application materials?

Yes, specific plans of the capital distribution should be included. There are numerous examples in the bond market of transactions structures that could qualify.

(iii) Should the CDFI Fund require specific intended uses of all the bond proceeds in the capital distribution plan or should the qualified issuers just be required to demonstrate an intended pipeline of underlying assets?

A CDFI should not have to provide the specific use of all bond funds but rather a defined and strong pipeline of projects and experience.

(iv) Should the CDFI Fund set minimum underwriting criteria for borrowers? Should applicants be required to demonstrate satisfaction of those criteria in the capital distribution plan?

No, the CDFI Fund should not set minimum underwriting criteria for end borrowers. CDFIs specialize in understanding risk in markets that are outside of the financial and economic mainstream, with a remarkable record of success and minimal losses and delinquencies. The Fund should rely on this unique experience by continuing to allow CDFIs to make the best decisions regarding the needs of their community.

6. Accountability of Qualified Issuers

(a) The CDFI Fund welcomes comments on how to monitor the use of proceeds and financial performance of qualified issuers, particularly with respect to the following questions:

(a) What tests should the CDFI Fund use to evaluate if 90 percent of bond proceeds have been invested in qualified loans? Should reports be required from the qualified issuer more frequently than on an annual basis?

All risk share, credit and liquidity reserves should count as deployed assets for purposes of the 90% deployment test. Annual reporting should be adequate from qualified issuers who are in compliance.

(c) What types of tests should the CDFI Fund use to evaluate satisfaction of the low-income or rural requirement set forth in Section 114A(a)(2)?

Within CSDC's specified LITP, the CDFI Fund should use a definition of low-income geographies based on several indicators including students in grades Pre-K-12 eligible for federally subsidized free or reduced price lunches under the national School Lunch Program; 2) public charter schools located in economically distressed census tracts; and 3) public charter schools located in communities with a large number of poor performing district schools. Rural areas should be defined according to the USDA specifications.

(d) What support, if any, would applicants and awardees like to receive from the CDFI Fund after having issued a bond?

The CDFI Fund should play an active role in supporting the qualified issuers in data tracking and information dissemination.

(e) What specific industry standards for impact measures (businesses financed, units of affordable housing developed, etc.) should the CDFI Fund adopt for evaluating and monitoring loans financed or refinanced with proceeds of the guaranteed notes or bonds?

Specific to CSDC's LITP, items such as free and reduced lunch population, enrollment, number or FTE positions created both during construction and at occupancy, total student positions created, academic achievement and adjacent growth of commercial, residential and other economic development.

(f) Should achievement of some standards or outcome measures be mandatory?

CSDC's customers are unique and creating standards of performance or outcome will be very difficult. CSDC, as a pioneer in the charter school lending sector, has the expertise and bandwidth to ensure that the funds are invested in projects with the highest community impacts while mitigating risk.

(g) Are the approval criteria for qualified issuers as listed in Section 114A(a)(8)(B) adequate? If not, what else should be included?

Criteria are adequate.

7. Prohibited Uses

(a) Section 114A(b)(5) provides certain prohibitions on use of funds including, "political activities, lobbying, outreach, counseling services, or travel expenses." The CDFI Fund encourages comments and suggestions germane to prohibited uses established in the Act, specifically as to whether there are other prohibited uses that the CDFI Fund should include.

No additional use of funds prohibitions should be imposed.

8. Servicing of Transactions

(a) Section 114A(f) states that, in general, to maximize efficiencies and minimize cost and interest rates, loans made under this section may be serviced by qualified program administrators, bond servicers, and a master servicer. This section further outlines the duties of the program administrator, servicers, and the master servicer. Comments regarding the servicing of transactions are welcome, specifically:

(i) The Act lists certain duties of a program administrator. Should there be other requirements?

(ii) The duties of a program administrator suggest that the CDFI Fund will serve as the program administrator for all issuances. Should the CDFI Fund require that each qualified issuer have a designated program administrator as suggested in section 114A(a)(7)?

Yes. This role should be left to the qualified issuer to determine the program administration role.

(iii) If so, should the servicer be eligible to serve as a program administrator for a qualified issuer?

Yes. In the case of CSDC, our LITP is unique and therefore CSDC may be best served as both servicer and program administrator.

(iv) Who should be responsible for resolving troubled loans?

In the case of troubled loans in the pool backing the guaranteed bond, a special servicer could be appointed. However, the guarantor should make this determination only after concluding that the originator (if serving the role of servicer)/issuer/aggregator is no longer competent or able to resolve the troubled situation.

(v) On what basis should servicers be compensated?

The servicer should be compensated based on the overall portfolio of loans on a percentage basis of the outstanding par amount of bonds.

(vi) Are there any duties not listed that should be included in sections 114A(f)(2) through 114A(f)(4)? Are there any prohibitions or limitations that should be applied?

9. General Compliance

The CDFI Fund welcomes comments on general compliance issues related to monitoring the guarantee portfolio, particularly with respect to the following questions:

(i) What types of compliance measures should be required by the CDFI Fund? Should the CDFI Fund mandate specific reports to be collected and reviewed by the servicer and ultimately the master servicer?

If so, please provide examples.

Yes, each participant in the program should be required to provide annual audited financial statements and an annual report of portfolio performance.

(ii) The Act states that “repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1).” How should the CDFI Fund enforce this requirement?

(iii) What penalties should the CDFI Fund impose if a qualified issuer is deemed noncompliant?

(iv) The Act provides that the qualified issuer pay a fee of 10 basis points annually. What penalties should be imposed for failure to comply?

The CDFI Fund should be able to replace any participant in the program (issuer, servicer etc) if that entity is not performing or loses its CDFI designation.

The fees should be insulated from any participant's noncompliance or nonperformance by being a part of the structured debt service requirements of an end borrower.

10. General Comments

The CDFI Fund is also interested in receiving any general comments and suggestions regarding the structure of the CDFI Bond Guarantee Program that are not addressed above.

CSDC believes that a minimum of one \$100 million issue should be dedicated to Charter School Facilities within the Community Facilities designation. New school development has a ripple effect in encouraging residential, commercial and other economic development as it is a stabilizing force. Charter Schools routinely provide a much higher FTE base than facilities of similar square footage and the number of citizens affected by a Charter School's establishment runs deep and wide throughout the community.